

FILED

FEB 22 2008

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATE DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Manuel A. Wagan

Petitioner,

vs.

SAN MATEO COUNTY SUPERIOR COURT

Respondent,

CALIFORNIA ATTORNEY GENERAL

Real Party in Interest.

CV Case 08 1082

ALTERNATIVE WRIT OF MANDATE

WHA
(PR)

Whereas it appears from the petition filed in the above captioned proceeding to be the Respondent mandatory ministerial duty to comply with the requirements of Penal code §664 (a) as define in §189 that Life sentence Shall Not be impose because petitioner was never been convicted by the jury and the jury did not make a separate finding of True in the premeditation allegation as Mandatorilly required by PC §664(a) and CALJIC 8.67. "The touchtone of due process is the protection of the individual against arbitrary government action. Dent v. West Virginia, 129 U.S. 114, 123 (1899); Wolff v. McDonnell, 418, U.S. 539, 558 (1974); Daniels v. Williams, 474 U.S. 327, 331 (1986). Petitioner's conviction of attempted first degree murder a noncrime in California, Bright, supra, at pl 664; Macias, supra, at 471-472; In re Brown, (1973) 9 C.3d 612, 624; Keeler v. Superior Court (1970) 2 C.3d 631-632 (no punishment without law) "the principle of nulla poena sine lege is foundational to american criminal jurisprudence." See, also People v. Bean (1989) 213 C.App.3d 646;

1 In re Winship, 90 S. Ct. 1068 (1970); Cunningham v. California 2007
 2 U.S. LEXIS 1324; Apprindi v. New Jersey 530 U.S. 466; In re Sandel
 3 , supra, Id. at 412; concerning the unconstitutional and illegal
 4 Life sentence imposed to petitioner by the respondent without
 5 petitioner's conviction of willful, deliberate and premeditated
 6 allegation that violated petitioner's due process right under the
 7 Cal. Const., Art., 1, §7(a) and the U.S. Constitution 8th and 14th
 8 Amendment. Petitioner seek the Court to reversed petitioner's
 9 conviction of "Attempted first degree murder" and his life sentence
 10 be vacated and that a judgment of acquittal be entered. Petitioner
 11 have no plain, speedy, and adequate remedy in the ordinary course
 12 of the law.

13 Whereas, by an Order of the court set forth below, it was ordered
 14 that a Writ of Mandate/Prohibition should issue to you; therefore,
 15 we command of you that immediately after receipt of this writ you
 16 meet your public duty and reversed and vacate petitioner's conviction
 17 of Attempted first degree murder and his life sentence and that
 18 a judgment of acquittal be entered, and until you comply with the
 19 Cal. PC § 664(a), as defined §189, CALJIC 8.67, Cal. const., Art., 1
 20 , §7(a), §14 and the U.S. const., 8th, and 14th Amendment and case
 21 law or that you Show cause before this Court at the Courtroom there-
 22 of at The United State District Court, Northern District of Calif-
 23 ornia, U.S. Courthouse, 450 Golden Gate Ave., San Francisco, CA.
 24 94102-3483, on _____ at _____ o'clock _____ of said day, or
 25 as soon thereafter as Counsel can be heard, why you have not done
 26 so.
 27

28 Witness the Honorable _____ attested by my

1 name and seal of said Court on this _____.

2 **LET THE FOREGOING WRIT ISSUE.**

3 It I ORDERED that a copy of this alternative writ and a copy of
4 the petition be served at least _____ days before the hearing on
5 the above order to show cause.

6 DATE: _____ 2008.

7
8 _____
9 Hon. Presiding Judge
10 IN THE UNITED STATE DISTRICT
11 COURT, NORTHERN DISTRICT OF
12 CALIFORNIA
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